IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18433 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GANGABEN WD/O DHANJIBHAI PATEL & 5 - Petitioner(s)

Versus

KANJIBHAI CHHAGANBHAI PARMAR & 6 - Respondent(s)

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Appearance :

MR.SUBHASH G BAROT for Petitioner(s) : 1 - 6.
None for Respondent(s) : 1 - 4, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5,4.2.6 - 7.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/09/2005

ORAL JUDGMENT

In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Gujarat Revenue Tribunal dated 17th June 2005 in Revision Application No. TEN.BA.

189/2003 by which the Gujarat Revenue Tribunal has dismissed the said Revision Application on the ground of limitation in which the petitioners had challenged the legality and validity of the order passed by the Deputy Collector, Petlad dated 29.10.1982 after a period of 21 years.

2. At the outset, it is to be noted that it is very unfortunate that the proceedings which came to be initiated in the year 1981 have not come to an end even after a period of 27 years. Few facts and chronological events right from 1981 till 2004-2005 are necessary for the purpose of determination of Special Civil Application. The dispute is with regard to lands bearing Survey No. 944/1, 944/2 and 944/3 situate at Village Moraj, Taluka-Khambhat. Kanjibhai Chhaganbhai Parmar, the respondent No.1 herein initiated proceedings under Section 70-B of The Bombay Tenancy and Agricultural Lands Act, 1948, {“the Tenancy Act” for short } before the Mamlatdar and ALT, Khambhat for declaring him as tenant of the lands in question. The Mamlatdar and ALT, Khambhat by order dated 22nd March 1982 in Case No. 176/1981 declared him as tenant of the land bearing Survey No. 944/1 only and held that he is not the tenant of the lands bearing Survey No. 944/2 and 944/3. Being aggrieved and dissatisfied with the order passed by the Mamlatdar & ALT, Khambhat dated 22nd March 1992 in not declaring him as tenant of the lands bearing Survey No. 944/2 and 944/3 the respondent No.1 herein

preferred Tenancy Appeal No. 110/82 under Section 74 of the Tenancy Act before the Deputy Collector, Petlad who, by order dated 29.10.1982, allowed the said appeal declaring the respondent No.1 as tenant of all the lands, i.e., lands bearing Survey No. 944/1, 944/2 and 944/3. It appears that thereafter the respondent No.1 approached the Deputy Collector by filing Case No. 8/82 under Section 84 of the Tenancy Act for getting possession and order came to be passed in favour of respondent No.1 tenant. It appears that in the meantime the lands in question were sold to one Hathibhai Jethabhai Parmar who challenged the order passed by the Deputy Collector, Petlad dated 29.10.1982 in Tenancy Appeal No. 110/82 as well as the order passed by the Deputy Collector under Section 84 of the Tenancy Act in Case No. 8/1982 before the Gujarat Revenue Tribunal {“the Tribunal” for short } being Revision Applications TEN.BA. No. 244/82 and 245/82. The Tribunal dismissed both the revision applications by judgment and order dated 28.7.1983. Being aggrieved and dissatisfied with the judgment and order dated 28.7.1983 passed by the Tribunal the said Hathibhai Jethabhai Parmar preferred Special Civil Application No. 5011 of 1983 before this Court and this Court remanded the matter to the Tribunal for its fresh decision. During the pendency of the said Revision Applications before the Tribunal on remand, the said Hathibhai Parmar withdrew the revision application on 16.8.1996 unconditionally. Thus, the order passed by the Deputy Collector, Petlad, dated 29.10.1982 in

Tenancy Appeal No. 110/82 by which the respondent No.1 herein Kanjibhai Chhaganbhai Parmar came to be declared as tenant of lands bearing Survey No. 944/1, 944/2 and 944/3 came to be confirmed. It appears that thereafter the petitioners filed a Regular Civil Suit No. 198/1998 before the learned Civil Judge (SD), Nadiad for partition of the properties in question in which they have also prayed for interim relief which was refused, against which an appeal is preferred before the learned District Judge, Nadiad, which is pending. In the meantime, the Mamlatdar and ALT fixed the purchase price in favour of respondent No.1, Kanjibhai Chhaganbhai Parmar, the tenant in Tenancy Case No. 21/1988 pursuant to the order passed by the Deputy Collector, Petlad dated 21.10.1982 in Tenancy Appeal No. 110/82 and the petitioners had preferred Appeal No. 117/2000 before the Deputy Collector, Petlad against the said order. Thereafter, the petitioners preferred Revision Application No. TEN.BA. 189/2003 challenging the order passed by the Deputy Collector, Petlad dated 29.10.1982 in Tenancy Appeal No. 110/82 after a period of 21 years along with an application for condonation of delay. Considering the delay and the aforesaid proceedings which took place between 1982 and 2004 and considering the fact that no cause has been shown to condone the delay, the Tribunal by its order dated 17th June 2005 dismissed the said Revision Application on the ground of delay as the same was after a period of 21 years. Being aggrieved and dissatisfied with the order passed by the Tribunal

dated 17th June 2005 in Revision Application No. TEN.BA 189/2003, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri Subhash Barot, learned advocate appearing on behalf of the petitioners has vehemently submitted that the order passed by the Deputy Collector, Petlad dated 28.10.1982 in Tenancy Appeal No. 110/82 was obtained by fraud and in connivance with their uncle and therefore the Tribunal ought to have condoned the delay and decided the Revision Application on merits. He has also further submitted that normally proceedings are to be decided on merits rather than technicalities and therefore it is requested to remand the matter to the Tribunal for its decision on merits.

4. I have gone through the judgment and order passed by the Tribunal. I have also considered the proceedings which had taken place between 1981-82 till 2003. The petitioners had challenged the order passed by the Deputy Collector, Petlad dated 29.10.1982 in Tenancy Appeal No. 110/82 after a period of 21 years and in between so many proceedings had taken place and at no point of time the petitioners had challenged the said order. On the contrary, the order came to be challenged by the subsequent purchaser, Hathibhai Jethabhai Parmar but he ultimately withdrew the revision application from

the Tribunal and the said order has become final. It is also required to be noted that even the consequential order with regard to fixing and determining the price of the land in question came to be passed by the Mamlatdar & ALT in Tenancy Case No. 21/1988 against which the petitioners had preferred Appeal No. 117/2000 before the Deputy Collector. Even thereafter also the petitioners did not challenge the order passed by the Deputy Collector, Petlad dated 29.10.1982 in Tenancy Appeal No. 110/82 and preferred revision application even after 3 years of even filing Appeal No. 117/2000. Considering the aforesaid facts and considering the fact that the order passed by the Deputy Collector, Petlad dated 29.10.1982 in Tenancy Appeal No. 110/82 came to be final long back and thereafter consequential orders are already passed, the Gujarat Revenue Tribunal is justified in dismissing the revision application which was after a period of 21 years. There is no jurisdictional error, much less an error of law, committed by the Gujarat Revenue Tribunal in dismissing the aforesaid revision application on the ground of limitation which was filed after a period of 21 years. Having regard to the facts and circumstances, no interference is required at the hands of this Court exercising power under Article 227 of the Constitution of India. Hence, there is no substance in the present Special Civil Application and the same is required to be dismissed and it is accordingly dismissed.

[M.R. Shah, J.]

RMR.